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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	ATTORNEY DOCKET NO. CONFIRMATION NO.	
10/813,781	03/31/2004	James Lee Gardiner	CC-3643	. 5225	
23377 WOODCOCK	7590 03/27/2007 WASHBURN LLP	EXAMINER			
CIRA CENTR	E, 12TH FLOOR	SMALLEY, JAMES N			
2929 ARCH STREET PHILADELPHIA, PA 19104-2891			ART UNIT	PAPER NUMBER	
	,		3781		
SHORTENED STATUTOR	RY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MC	ONTHS	03/27/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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•	·	Application	No.	Applicant(s)					
Office Action Summary		10/813,781		GARDINER, JAM	ES LEE				
		Examiner		Art Unit	···				
		James N. Sr	nalley	3781					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address									
Period for Reply			EVDIDE AMONTU	I(C) OD TUIDTY (2	0) DAVC				
after SIX (6) MONTHS from the If NO period for reply is specified Failure to reply within the set or	R, FROM THE MAILING sble under the provisions of 37 CFF mailing date of this communication. I above, the maximum statutory per extended period for reply will, by stater than three months after the m	B DATE OF THIS R 1.136(a). In no event, riod will apply and will e atute, cause the applica	COMMUNICATIO however, may a reply be ti xpire SIX (6) MONTHS fror tion to become ABANDON	N. imely filed in the mailing date of this co ED (35 U.S.C. § 133).					
Status	•								
1) Responsive to con	nmunication(s) filed on <u>0</u>	<u>3 January 2007</u> .							
2a) This action is FINA	This action is <b>FINAL</b> . 2b) This action is non-final.								
,									
closed in accordan	ce with the practice unde	er Ex parte Quay	de, 1935 C.D. 11, 4	153 O.G. 213.					
Disposition of Claims									
4) Claim(s) 1-32 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) is/are allowed.  6) Claim(s) 1-32 is/are rejected.  7) Claim(s) is/are objected to.  8) Claim(s) are subject to restriction and/or election requirement.									
Application Papers									
9) The specification is	•								
, <del>-</del>	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.								
	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).								
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.								
Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.									
Attachment(s)									
1) Notice of References Cited (I			Interview Summar						
Notice of Draftsperson's Pate     Information Disclosure States     Paper No(s)/Mail Date	ment(s) (PTO/SB/08)	5	Paper No(s)/Mail [ ) Notice of Informal ) Other:						

#### **DETAILED ACTION**

## Claim Objections

1. Claims 23 and 28 are objected to because of the following informalities: Claim 23 ends with two periods; claim 28 does not have a period at the end of the sentence. Appropriate correction is required.

# Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 3. Claims 1-3, 6-9, 17-22 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuo US 5,131,554.

Kuo '554 teaches a plastic dust cover for sealing a beverage can countersink comprising a ringshaped filler (unlabeled; read to comprise the annular peripheral portion which depends into the container
countersink). Central portion (4) is read to be the substantially flat or continuous surface extending
radially inwardly from the countersink.

Regarding claims 22-23, Examiner notes plastic is a synthetic arrangement of naturally formed polymers, therefore it is read to be both synthetic and natural.

4. Claims 1-4, 6-12, 17-25 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Nieuwoudt US 5,996,832.

Nieuwoudt '832, in the embodiment of figure 17, teaches a plastic cover (68.2) for sealing a beverage can top, including countersink filler material (82), and where the can top has a raised central portion (64). Central portion (78) is read to be the substantially flat or continuous surface extending

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radially inwardly from the countersink. The reference discloses in column 2, lines 9-11 that mechanical deformation or gluing (read to comprise an adhesive) are suitable means for securing the cover to the end of a beverage can.

Regarding claims 22-23, Examiner notes plastic is a synthetic arrangement of naturally formed polymers, therefore it is read to be both synthetic and natural.

## Claim Rejections - 35 USC § 103

- 5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuo US 5,131,554 in view of Tominaga et al. US 5,653,355.

Kuo '554 fails to teach reinforcing ribs on the cap outer surface.

Tominaga '355 teaches a reinforcing rib (14) adjacent the drink opening on the can end panel for providing rigidity to the can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can end of Kuo '554, providing the reinforcing rib (14) taught by Tominaga '355, motivated by the benefit of strengthening the can end against deformation from internal pressure.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nieuwoudt US 5,996,832 in view of Tominaga et al. US 5,653,355.

Nieuwoudt '832 fails to teach reinforcing ribs on the cap outer surface.

Tominaga '355 teaches a reinforcing rib (14) adjacent the drink opening on the can end panel for providing rigidity to the can end.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can end of Nieuwoudt '832, providing the reinforcing rib (14) taught by Tominaga '355, motivated by the benefit of strengthening the can end against deformation from internal pressure.

#### **Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer.

A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-32 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No. 6,425,493. Although the conflicting claims are not

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identical, they are not patentably distinct from each other because the claims are drawn to the same invention.

10. Claims 1-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,729,495. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are drawn to the same invention.

### Response to Arguments

- 11. Applicant's arguments filed 03 January 2007 have been fully considered but they are not persuasive.
- a) Applicant argues Kuo does not teach "filler material," that is "covering the groove," that is "smoothly merging with the upper surface of the center panel," and which extends to about the same level as the center panel."

Examiner notes in Kuo '554, figure 2, that the cover can be reasonably interpreted to comprise "filler material" because it fills the opening. It covers the groove because it is disposed on top of the groove, thus covering it from the ambient conditions. It smoothly merges with the container top in that it is full contact with the top surface of the can, and thus merges smoothly with the upper surface. Lastly, it is at "about" the same level as the center panel as it is disposed just above the can top surface.

b) Applicant argues Nieuwouldt '832 does not teach "filler material," that is "covering the groove," that is "smoothly merging with the upper surface of the center panel," and which extends to about the same level as the center panel."

Examiner notes in Nieuwoudt '832, figures 17, 18 and/or 22, that the cover can be reasonably interpreted to comprise "filler material" because it fills the opening. It covers the groove because it is disposed on top of the groove, thus covering it from the ambient conditions. It smoothly merges with the container top in that it is full contact with the top surface of the can, and thus merges smoothly with the

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upper surface. Lastly, it is at "about" the same level as the center panel as it is disposed just above the

can top surface.

Allowable Subject Matter

Claims 13-16 and 27-31 would be allowable if rewritten in independent form including all of the 12.

limitations of the base claim and any intervening claims, and with the filing of a Terminal Disclaimer in

order to overcome the outstanding Double Patenting rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can

normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where

this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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ANTHONY D. STASHICK SUPERVISORY PATENT EXAMINER

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